85-1039 (1)

Supreme Court, U.S.
FILED
DEC 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

JIM BUTLER & Co., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH B. QUANSAH, JR.
Petitioner, pro se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

55 pp

QUESTION PRESENTED

Did the U.S.Court of Appeals for the Ninth Circuit properly dismiss petitioner's;

1. appeal on the grounds that there is no Federal subject matter jurisdiction for negligent collision between petitioner's car/property and an interstate transport carrier transporting steel metals involving interstate commerce as well as trade in U.S.Highway 101;

2. appeal and did not deprived petitioner from his car/property nor his rights for damages wherein, respondents did not have any of the State of California required financial responsibility coverage or insurance thus, violated his Civil Rights under Fourteenth Amendment?

TABLE OF CONTENTS

		Page
1.	Question Presented	1
2.	Parties to the Proceeding...	2
3.	Opinion Below	2
4.	Jurisdiction	3
5.	Statute Involved	9
6.	Statement of the Case	9
7.	Statement of Reasons	16
8.	Conclusion	28
9.	Certificate of Service	30
10.	Appendix 1	i
11.	Appendix 2	ii
12.	Appendix 3	iii
13.	Appendix 4	iv
14.	Appendix 5	v
15.	Appendix 6	vi

TABLE OF AUTHORITIES

		Page
1.	28 U.S.C. § 1254(1)	3
2.	28 U.S.C. § 1292(a)	4, 16
3.	28 U.S.C. § 1343	4, 16
4.	42 U.S.C. § 1981	9, 13
5.	42 U.S.C. § 1983	9, 13, 23
6.	42 U.S.C. § 1988	15, 27
7.	The Fourteenth Amendment.	1, 14, 27
8.	Abanese v Maats, 382 US 283, 15 L ed 2d 327, 86 S Ct 429 (1965)	26
9.	Block v Neal, 75 L Ed 2d 67 (1983)	26
10.	Colorado Com. v Continental Air Lines, 10 L ed 2d 84, 83 S Ct 1022 (1963)	20
11.	Conley v Gibson, 355 US 41, 2 L ed 2d 80, 78 S Ct 99 (1957)	24
12.	Flannery v United States, 649 F. 2d 270 (1981)	27
13.	Foremost Insurance Co. v Richardson, 457 US 668, 73 L ed 2d 300, 102, S Ct 2654 (1982)	19

TABLE OF AUTHORITIES (continue)

Page

14. Gutierrez v Waterman Steamship Corp., 373 US 206, 10 L ed 2d 297, 83 S Ct 1185 (1963) 27

15. Kelly v Smith, 485 F. 2d 520 (1973) 19

16. Machinist Asso. v Central Airlines, 372 US 682, 10 L ed 2d 67, 83 S Ct 956 (1963) 23

17. Nees v Julian Goldman Stores, Inc., 109 W. Va 329, 154 S.E. 769 (1930) 27

18. Romero v International Terminal Operating Co., 358 US 354, 360, 3 L ed 2d 368, 375, 79 S Ct 468 (1959) 24

19. Seaboard Coast Line Railroad Co. v United States, 473 F. 2d 714 (1973) 27

PARTIES TO THE PROCEEDING

KENNETH B. QUANSAH, JR.,
Petitioner,

vs.

JIM BUTLER & Co., and
JIM BUTLER,
Respondents.

OPINION BELOW

Petitioner filed a complaint in the United States District court for the Northern District of California. The District court granted Respondents motion to dismiss in an order dated March 28, 1984. A copy of this order is attached hereto as Appendix 5. The District court again issued a judgment dated March 28, 1984. A copy of this judgment is attached hereto as Appendix 4. Petitioner filed an appeal and the

Appeals Court for the Ninth Circuit issued a memorandum dated September 4, 1985 to dismiss the appeal. A copy is attached hereto as Appendix 3. The petition for rehearing was filed on September 16, 1985. The petition for rehearing was denied in an order dated September 27, 1985. A copy is attached hereto as Appendix 2.

JURISDICTION

The jurisdiction of this court is invoked 28 U.S.C. § 1254(1). The U.S. Court of Appeals for the Ninth Circuit dismissed petitioner's appeal for lack of subject matter jurisdiction in a memorandum dated September 4, 1985. Consequently, petitioner has averred

28 U.S.C. § 1343 in his original complaint in the district court for the circumstances of this matter. Subsequently, petitioner has averred 28 U.S.C. § 1292(a) for the purpose of jurisdiction in the Appeals court. Respondents an interstate transport carrier and precisely not a private car negligently rolled their tractor with two trailers which was licensed and registered in numerous States across United States and clearly bore the inscriptions Jim Butler & Co., to collide the rear of petitioner's car/property while respondents were transporting steel metals in U.S.Highway 101. Petitioner totally wrecked his car/property beyond repairs in the instant of the collision. Respondents tractor with two trailers was also registered and licensed in California

with license plate number "1S25276".

Apparently, respondents are interstate transport carrier and a commercial vehicle hence, no private cars are allowed to be registered and licensed in numerous States across United States. The Federal court has jurisdiction under actions between citizens of different States. Respondents did not have financial responsibility coverage or insurance as required by California State law herein, the general venue in this case. However, respondents were also registered and licensed in other States and they were doing business therein. Although, respondents were registered and licensed in California and had California business office, there are substantial reasons for the Federal court to grant jurisdiction under diversity of citizenship. In the

alternative, Jim Butler & Co., an interstate transport company was registered and licensed in numerous States therefore the theory of diversity of citizenship applies in this circumstance for the Federal court to grant jurisdiction. Hence, the Federal court has jurisdiction between citizens of different States. Petitioner claims, the Federal court also has jurisdiction under interstate commerce and trade. Petitioner claims, he further averred admiralty jurisdiction cases with references to the determination of jurisdiction in view of the subject matter venue in those cases and their associations in the determination of jurisdiction. Herein, the venue of this case before us which is U.S.Highway 101 has association to interstate commerce and trade. Apparently, a

sufficient grounds for Federal jurisdiction under interstate commerce and trade. Petitioner claims, the occurrence of this collision alone presented sufficient danger if not a restrain to interstate commerce and trade for the Federal court to grant jurisdiction under interstate commerce and trade.

Petitioner further claims, respondents did not have financial responsibility coverage or insurance at the time of the collision in his original complaint in the District court. Petitioner herein, alleged respondents deprived him from his car/property under color of State law. Petitioner claims, the Federal court again has jurisdiction over this case but the Federal court did not grant jurisdiction. Petitioner claims the Federal court has jurisdiction over this

case hence, his rights were violated under section 1981 and 1983. Petitioner claims, State of California law requires that every driver and every owner of a motor vehicle must have financial responsibility coverage or insurance. However, respondents did not have any financial responsibility coverage or insurance although, respondents were registered and licensed in California. Petitioner claims, respondents therefore deprived him from his car/property under color of State law.

The petition for rehearing was filed on September 16, 1985. The petition for rehearing was denied in an order dated September 27, 1985. Petitioner's notice of appeal for review in U.S.Supreme court was filed on October 18, 1985 in U.S. Court of Appeals for the Ninth Circuit. A copy is attached hereto as

Appendix 6.

STATUTE INVOLVED

The statutes involved are the Civil Rights Act of 1870 and the Civil Rights Act of 1871, 42 U.S.C. §§ 1981, 1983.

These statutes are prvided in relevant parts and attached hereto as Appendix 1.

STATEMENT OF THE CASE

Definitions: "Quansah and Petitioner are used in place of the personal pronoun I".

On July 25, 1983 round about 3:15 p.m., Quansah the petitioner was

traveling to work in Mountain View, California from San Jose, California in his 1967 plymouth barracuda in the third lane in U.S.Highway 101 at Frontage Road, San Jose, California. Quansah claims, all of a sudden a pick-up truck entered the third lane from the Frontage Road enterance to Highway 101 at a very slow speed without checking traffic already in the highway lanes. Quansah braked his car to a slower speed than the pick-up truck ahead of him and to give the pick-up truck a right-of-way. Suddenly, a tractor with two trailers not following Quansah previously changed lanes from the second lane to the third lane herein, negligently kept rolling and collided the rear of his car. Quansah's car wrecked at the scene after it had run at a very high speed from the impact of the collision to a

full stop with his control at the steering wheel and the brakes. However, Quansah got out of the car alive but with injuries. Quansah did not noticed any serious injuries until he arrived in the hospital.

Quansah claims, he had his insurance identification card at the scene of the collision and asked the tractor driver, Jim Butler for his insurance card or financial responsibility coverage. Jim Butler replied he had no insurance identification or financial responsibility coverage. Jim Butler then suggested Quansah should file a lawsuit in order to solve the problem. Quansah therefore asked for Jim Butler's driver license, mailing address and tractor registration. Quansah further asked Jim Butler if he saw the brake lights on his car when he braked and

Jim Butler replied "how na' hell can you stop in the highway". Jim Butler thereafter replied he saw the brake lights on his car but he could not brake in time to stop the tractor from the collision. Jim Butler again suggested Quansah should try to repair his car and he will telephone him to find out about the repairs. Quansah towed the car to three different car mechanic shops to repair the car although the body of the car was visibly and totally wrecked beyond repairs. Quansah claims, all the mechanics told him the car was totally wrecked beyond repairs and they were unable to repair it. Quansah paid for a new electrical ignition, cylinder head and labor but the mechanics were unable to repair it. Quansah waited for Jim Butler's telephone call but he did not telephone him. Quansah tried on too

many occasions to reach Jim Butler by the telephone and he never reached him. Quansah thereafter filed a lawsuit in U.S.District court for the Northern District of California hence, Jim Butler proved to be negligent and unconcerned about his property. Quansah claims, respondents deprived him from his car/property in as much as his Civil Rights while transportation to and from work is part of our lives in this area of California. Quansah therefore, seeked for his rights under section 1981 and section 1983, 42 U.S.C. §§ 1981, 1983.

Quansah claims, it is explicitly written in all driver training manuals as well as Department of Motor Vehicle handbooks that "all drivers should drive within the speed limit they can control and it is safe according to the condition

of the highway". Quansah claims, it is therefore very clear at this juncture that in a sunny dry day if, respondent Jim Butler was driving according to the condition of the highway this collision would not have occurred.

Quansah claims, as a result of all the above respondents deprived him from his car/property as well as all priviledges thus, violated his Civil Rights under Fourteenth Amendment.

The District court dismissed this case on respondents motion to dismiss on grounds of subject matter jurisdiction. Quansah subsequently, filed an appeal in the District court on April 23, 1984. The Court of Appeals for the Ninth Circuit also dismissed Quansah's appeal on the same subject matter jurisdiction in a memorandum dated September 4, 1985.

The petition for rehearing was denied in an order dated September 27, 1985. Quansah hence, filed a notice of appeal on October 18, 1985 for a review in the U.S.Supreme Court.

Quansah seeks to recover his cost of litigation and attorney fees if allowed by the Civil Rights attorney fees award Act of 1976, 42 U.S.C. § 1988. Quansah wants to appear in the U.S.Supreme Court to argue all relevant issues he could not present.

*

STATEMENT OF REASONS

Quansah argues, respondents frustration and inconvenient pleadings for the mercy of Solomon shall never be pardoned by the wisdom of Solomon herein, respondents can not take anything whatsoever from the subject matter jurisdiction.

Inta alia, Quansah has invoked 28 U. S.C. § 1343 for the circumstances of jurisdiction in his original complaint in the District Court. Apparently, the district court has jurisdiction under the above averment which is Civil Rights. Subsequently, Quansah averred 28 U.S.C. § 1292(a) for the purpose of jurisdiction in the Appeals Court.

Quansah argues, respondents an interstate transport carrier and precisely not a private car negligently rolled their tractor with two trailers

which was licensed and registered in numerous States across United States and clearly bore the inscriptions Jim Butler & Co., to collide the rear of his car/property while respondents were transporting steel metals in U.S.Highway 101. Quansah totally wrecked his car/property beyond repairs in the instant of the collision.

Quansah argues, respondents tractor with two trailers was also registered and licensed in California with license plate number "IS25276". Apparently, Quansah argues, respondents are interstate transport carrier and a commercial vehicle hence, no private cars are allowed to be registered and licensed in numerous States across United States. Quansah alleges, the Federal court has jurisdiction under actions between citizens of different

States. Quansah argues, respondents did not have financial responsibility coverage or insurance as required by California State law herein, the general venue in this case. Quansah alleges, however, respondents were also registered and licensed in other States and they were doing business therein. Quansah argues, although respondents were registered and licensed in California and had California business office, there are substantial reasons for the Federal court to grant jurisdiction under diversity of citizenship. Quansah further argues, respondents, an interstate transport carrier was also registered and licensed in numerous States therefore, the theory of diversity of citizenship applies in this circumstance for the Federal court to grant jurisdiction. Quansah alleges,

hence, the Federal court has jurisdiction between citizens of different States.

Quansah argues, the Federal court again has jurisdiction under interstate commerce and trade. Quansah alleges, he averred admiralty jurisdiction cases with references to the determination of jurisdiction in view of the subject matter venue in these cases and their associations in the determination of jurisdiction. See Foremost Insurance Co. v Richardson, 457 US 668, 73 L ed 2d 300, 102, S Ct 2654 (1982); Kelly v Smith, 485 F 2d 520 (1973). Quansah argues, herein, the venue of this case before us which is U.S.Highway 101 has association to interstate commerce and trade. Quansah argues, apparently, a sufficient grounds for Federal jurisdiction under interstate commerce and trade. Quansah alleges, the occurrence of this collision

alone presented sufficient danger if, not a restrain to interstate commerce and trade for the Federal court to grant jurisdiction under interstate commerce and trade.

Quansah argues, the issues in his original complaint as well as the statutes presented are purposely for his claim for deprivation of car/property and personal injuries under color of State of California motor vehicle financial responsibility law. Quansah argues, State of California also has similar statutes but not identical to these Federal statutes presented in this case before us and the purpose of these Federal statutes would to some extent be frustrated by the State statutes in the circumstances of this matter. See Colorado Com. v Continental Air Lines, 372 US 714, 10 L ed 2d 84, 83 S Ct 1022

(1963). Quansah argues, in Colorado Commission supra, the defendant Continental Air Lines flies over one State to another. Quansah argues, the plaintiff in that case for this matter above alleged a Federal statute for the purpose of his case and the Supreme Court stated;

> "A State statute identical in purpose with a Federal statute is invalid under the supremacy clause of the Federal Constitution only where the purpose of the Federal statute would to some extent be frustrated by the State statute".

Quansah argues, the Civil Rights statutes as alleged in this case before us would to a great extent be frustrated by the similar State statute therefore the Federal court has jurisdiction to this case especially in this matter whereby respondents are an interstate transport carrier and the Federal court

has jurisdiction under diversity of citizenship. Moreover, herein, respondents were transporting steel metals which involves interstate commerce and trade in U.S.Highway 101 and the Federal court also has jurisdiction under interstate commerce and trade. Quansah argues, respondents have no other remedies and he must rest his shoulders as well as his typewriter.

Quansah argues, he claimed respondents did not have financial responsibility coverage or insurance at the time of the collision in his original complaint in the District court. Quansah alleged, respondents also refused to take up any steps to settle this matter months after the collision and these prompted his complaint in the District court. Quansah herein, alleged, respondents deprived him from his car/property under

color of State law. Quansah argues, the Federal court again has jurisdiction over this case but the Federal court did not grant jurisdiction. Quansah argues, the Federal court has jurisdiction over this case hence, his rights were violated under section 1983. Quansah alleges, State of California law requires that every driver and every owner of a motor vehicle must have financial responsibility coverage or insurance. Quansah argues, however, respondents did not have any financial responsibility coverage or insurance although respondents were registered and licensed in California. Quansah alleges, respondents therefore deprived him from his car/property under color of State law. Quansah argues, Federal jurisdiction is therefore obvious for this matter. See Machinist Asso. v

Central Airlines, 372 US 682, 10 L ed 2d 67, 83 S Ct 956 (1963); Romero v International Terminal Operating Co., 358 US 354, 360, 3 L ed 2d 368, 375, 79 S Ct 468 (1959); Conley v Gibson, 355 US 41, 2 L ed 2d 80, 78 S Ct 99 (1957). Quansah argues, the issues of law in the determination of jurisdiction in the above citations are more identical to this case before us and neither the States nor their Agencies have the exclusive jurisdiction to the above cited cases as well as the case before us. Quansah alleges, the Federal court therefore has jurisdiction to this case before us.

Quansah argues, respondents negligently rolled their uninsured tractor with two trailers to collide the rear of his car. Quansah alleges, due to the circumstances of this

collision it is apparent that respondent Jim Butler was not driving according to the condition of the highway in order for him to drive safely in the highway. Quansah argues, traffic came to a stand-still in the highway repeatedly and unexpectedly but respondent Jim Butler was not driving according to the condition of the highway in order to avoid the collision. Quansah argues, after the collision he asked respondent Jim Butler if he saw the brake lights on his car/vehicle before the collision when he pulled on his brake to prevent his car/vehicle from colliding the pick-up truck ahead of him and to give the pick-up truck right-of-way. Respondent Jim Butler replied, he saw the brake lights but he could not brake in time to stop the collision. Quansah argues, this further proves Jim Butler

was not driving according to the condition of the highway. Quansah alleges, it is written in all driver training manuals as well as Department of Motor Vehicles handbooks that;

> "all drivers should drive within the speed limit they can control and it is safe according to the condition of the highway".

Quansah argues, respondent Jim Butler asked him to try to repair his car/vehicle and he will reimburse him for the repairs even though the car was wrecked beyond repairs at the scene of the collision. Quansah argues, he paid for the repairs but neither Jim Butler nor Jim Butler & Co., tried to settle this matter months after the collision herein, further proves respondents' negligence. See Abanese v Maats, 382 US 283, 15 L ed 2d 327, 86 S Ct 429 (1965); Block v Neal, 75 L Ed 2d 67

(1983); Flannery v United States, 649 F. 2d 270 (1981); Gutierrez v Waterman Steamship Corp., 373 US 206, 10 L ed 2d 297, 83 S Ct 1185 (1963); Nees v Julian Goldman Stores, Inc., 109 W. Va 329, 154 S. E. 769 (1930); Seaboard Coast Line Railroad Co. v United States, 473 F. 2d 714 (1973).

Quansah argues, as a result of all the above respondents deprived him from his car/property as well as all rights and priviledges thus, violated his Civil Rights under Fourteenth Amendment.

Quansah seeks to recover his cost of litigation and attorney fees if, it is allowed by the Civil Rights attorney fees award Act of 1976, 42 U.S.C. § 1988. Quansah alleges, attorney fees were awarded in the above citations and he seeks the above citations as

authority hence, the issues of law are much the same as this case before us.

*

CONCLUSION

Quansah concludes herein and claims, he is entitled to the total amount of damages of one hundred thousand dollars ($100,000.00) or a reasonable amount of damages that might seem appropriate by this court.

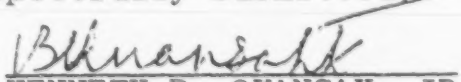
Quansah has to be remedied or compensated for damages as well as pain and suffering. It is a burden respondents did not have any financial

responsibility coverage or insurance especially when respondents main business is driving tractor with trailers transporting goods up and down the streets and highways. Quansah has exhausted all of respondents remedies and a fair decision must be rendered.

Quansah stands firm on his feet herein, claims, respondents type of business and their involvement with the population under this jurisdiction is also a burden if, not unreasonable to the Constitution before us.

DATED: San Jose, California
November 29, 1985

Respectfully submitted,



KENNETH B. QUANSAH, JR.
Petitioner, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

CERTIFICATE OF SERVICE

On December 13, 1985 I served the attached document entitled Petition For a Writ of Certiorari by mailing two copies certified, first class, postage prepaid to respondents attorneys as follows:

Susan Simon, Esq.,
ALLEN & SIMON
350 California St., Suite 1990
Post Office Box 7913
San Francisco, CA 94120
Telephone (415)982-4424

Attorneys for Respondents
Jim Butler & Co., et al

Executed this 13th day of December, 1985 in San Jose, California.

KENNETH B. QUANSAH, JR.
Petitioner, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)289-9947

Subscribed and Sworn to Before me this 13th day of December 1985.
Witness my hand and official seal.

/s/MARCIA L. THOMPSON
NOTARY PUBLIC
My Commission Expires Feb. 20, 1988.

APPENDIX 1

Statute Involved

Section 1981 provides in full:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

Section 1983 provides in full:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: SEP. 27, 1985

NO. 84-1903

DC No. CV 83-20185 WAI

ORDER

KENNETH B. QUANSAH, JR.,
Plaintiff/Appellant,

vs.

JIM BUTLER & CO., et al.,
Defendants/Appellees.

Before: FERGUSON, NORRIS and WIGGINS,
Circuit Judges.

The petition for rehearing is denied.

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: SEP. 4, 1985

No. 84-1903

DC No. CV 83-20185 WAI

MEMORANDUM

KENNETH B. QUANSAH, JR.,
Plaintiff/Appellant,

v.

JIM BUTLER & CO., et al.,
Defendants/Appellees.

Appeal from the United States District Court for the Northern District of California
William A. Ingram, District Judge, Presiding

Submitted July 8, 1985

Before: FERGUSON, NORRIS and WIGGINS, Circuit Judges

Quansah filed suit under the Civil Rights Act statutes in federal district court, alleging that his auto accident with James Butler's tractor-trailer was due to Butler's

negligence. The district court dismissed Quansah's claim for lack of subject matter jurisdiction. Defendant requests attorney's fees pursuant to Rule 38.

The court of Appeals reviews de novo a district court's decision on subject matter jurisdiction. Clayton v. Republic Airlines, Inc., 716 F.2d 729, 730 (9th Cir. 1983).

We affirm the dismissal because Quansah fails to allege any basis for federal jurisdiction. We deny defendant's request for attorney's fees because Quansah has not abused the judicial process.

1. Jurisdiction

In July of 1983, Quansah was involved in an automobile accident on Highway 101 in California with James Butler. Quansah alleged that Butler acted negligently and treated Quansah with a

lack of concern, and Quansah therefore filed suit in the district court. Quansah claims violation of his rights under 42 U.S.C. §§ 1981 and 1983. He therefore asserts jurisdiction under 28 U.S.C. § 1343. Alternatively, Quansah asserts the admiralty jurisdiction of the court, 28 U.S.C. § 1333, the voting rights jurisdiction of the court, 28 U.S.C. § 1357, or jurisdiction pursuant to a venue statute, 28 U.S.C. § 1391. Finally, Quansah argues that although he has a state remedy for Butler's alleged negligence, the state remedy is preempted by the Civil Rights statutes.

None of those statutes confer federal subject matter jurisdiction over this claim. In order to state a claim brought under 42 U.S.C. § 1983, plaintiff must allege that "(1) the

defendant was acting under color of state law at the time the acts complained of were committed, and that (2) the defendant deprived plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States". Briley v. State of California, 564 F.2d 849, 853 (9th Cir. 1977). See Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978). Quansah has failed to allege that Butler was acting under color of state law. In fact, Quansah alleged that Butler was simply a private truck driver. Title 42 U.S.C. § 1983 does not reach such purely private conduct. Briley, 564 F.2d at 855.

Title 42 U.S.C. § 1981 "relates primarily to racial discrimination in the making and enforcement of contracts". Johnson v. Railway Express Agency, 421 U.S. 454, 459 (1975). See

Runyon v. McCarthy, 427 U.S. 160 (1976). Quansah alleges no discrimination of any kind. He fails to state a claim under 42 U.S.C. § 1981.

Quansah also asserts that his claim falls within the admiralty jurisdiction of the district court. He alleges no facts, however, that would bring his claim within 28 U.S.C. § 1333, the admiralty jurisdiction statute.

Quansah asserted in the district court that his claim is cognizable under 28 U.S.C. § 1357 or 28 U.S.C. § 1391. The first statute confers jurisdiction over civil actions to redress injuries "under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State". 28 U.S.C. § 1357. The second statute applies only to venue,

not jurisdiction. See Bookout v. Beck, 354 F.2d 823, 825 (9th Cir. 1965). Thus neither affords Quansah a federal forum for his negligence claim.

Quansah additionally argues that as a negligence claim, the district court should have had jurisdiction. Because there is no diversity of citizenship among the parties, there is no basis for his assertion that his negligence claim should be cognizable in the district court.

2. Attorney's Fees

The defendant requests attorney's fees pursuant to Rule 38 of the Federal Rules of Appellate Procedure. Quansah's appeal is not meritorious, but he is pro se and it does not appear that he acted in bad faith or with an intent to harass. His complaint failed to state a federal claim, but it clearly alleges a

state cause of action. We therefore deny the defendant's request for attorney's fees against Quansah.

Conclusion

The decision of the district court dismissing this claim for lack of subject matter jurisdiction is AFFIRMED. Defendant's request for attorney's fees against Quansah is DENIED.

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

FILED: MAR. 29, 1984

No. C 83-20185 WAI

JUDGMENT

KENNETH B. QUANSAH, JR.,
Plaintiff,

vs.

JIM BUTLER & CO., et al.,
Defendants.

In accordance with the accompanying order, it is hereby ORDERED, ADJUDGED AND DECREED that this action be DISMISSED.

DATED: 3/28/84

/s/WILLIAM A. INGRAM
WILLIAM A. INGRAM
United States
District Judge

APPENDIX 5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

FILED: MAR. 29, 1984

No. C 83-20185 WAI

ORDER

KENNETH B. QUANSAH, JR.,
Plaintiff,

vs.

JIM BUTLER & CO., et al.,
Defendants.

It is hereby ORDERED that defendants' Motion to Dismiss is GRANTED, there being no federal subject matter jurisdiction over this case. Foster v. Tourtellotte, 704 F.2d 1109, 1111 (9th Cir. 1983).

DATED: 3/28/84

/s/WILLIAM A. INGRAM
WILLIAM A. INGRAM
United States
District Judge

APPENDIX 6

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: OCT. 18, 1985

No. 84-1903

NOTICE OF APPEAL
pro-se

KENNETH B. QUANSAH, JR.,
Appellant,

vs.

JIM BUTLER & CO., et al.,
Appellees.

Notice is hereby given that Appellant pro-se, Kenneth B. Quansah, Jr., appeals from this court's order on September 27, 1985 to the Supreme Court of the United States pursuant to 28 U.S.C. § 1254(1).

Appellant claims the Appeals court for the Ninth Circuit overlooked the fact that Jim Butler & Co., et al is an interstate transport carrier and therefore the Federal court has jurisdiction under diversity of citizenship.

Appellant claims State of California law requires that every driver and every owner of a motor vehicle must have financial responsibility coverage or insurance. Appellant claims Appellees did not have financial responsibility coverage or insurance in his original complaint in the District court. Appellant herein alleged Appellees deprived him from his property/vehicle under color of State law but the Federal court again overlooked this essential issue and did not grant jurisdiction.

/s/KENNETH B. QUANSAH, JR.

KENNETH B. QUANSAH, JR.
Appellant, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)226-5439

Certificate Of Service

On October 18, 1985 I served the attached document entitled Notice Of Appeal by mailing copies first class, postage prepaid to the Attorneys of Appellees as follows;

ALLEN & SIMON
Susan Simon, Esq.,(of counsel)
350 California, Suite 1990
P. O. Box 7913
San Francisco, CA 94120

Executed this 18th day of October, 1985 in San Jose, California.

/s/KENNETH B. QUANSAH, JR.
KENNETH B. QUANSAH, JR.
Appellant, pro-se
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)226-5439

Supreme Court, U.S.
FILED
JAN 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1039

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

KENNETH B. QUANSAH,
Petitioner,
vs.
JIM BUTLER & CO. and JIM BUTLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JAMES TALCOTT LINFORD
465 California Street
11th Floor
San Francisco, CA 94104
Counsel for Respondents

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

BEST AVAILABLE COPY

8 pp

QUESTIONS PRESENTED

Do the Federal Courts have jurisidiction in this matter, that is,

1. Can federal diversity jurisdiction be argued where plaintiff and defendant are both residents of the same state?

2. Can a motor vehicle accident, between a car and an interstate carrier on a freeway which is part of the national highway system, give rise to federal jurisdiction as a "regulation of commerce" under the Commerce Clause of the United States Constitution?

3. Can a motor vehicle accident on a freeway which is part of the national highway system provide a ground for maritime jurisdiction?

4. Can claims for damages, without allegations of discrimination, invoke federal jurisdiction under 42 U.S.C. §§ 1981 and 1985(3) and under the Thirteenth Amendment?

5. Can claims for damages, concerning uniquely the acts of private individuals, with no participation by any government official, invoke federal jurisdiction under 42 U.S.C. section 1983 and the Due Process Clause of the Fourteenth Amendment?

TABLE OF CONTENTS

Page

A. Since there is no diversity of citizenship there is no diversity jurisdiction under 28 U. S. C. section 1332 .. 1

B. There is no federal subject matter jurisdiction since no federal quesion is posed 2

1. A motor vehicle accident is not a "regulation of commerce" under the Commerce Clause, Article I, section 8, of the Constitution 2

2. This motor vehicle accident on a freeway does not involve maritime activity under 28 U. S. C. section 1333 2

3. Without an allegation of discrimination, petitioner's claim is not cognizable under 42 U. S. C. sections 1981 or 1985(3) 2

4. Since there was no participation by any governmental actor, petitioner's claim is not cognizable under 42 U. S. C. section 1983 and the Due Process Clause of the Fourteenth Amendment ... 3

Conclusion 3

TABLE OF AUTHORITIES CITED

	Page
Article I, § 8, Constitution	2
Thirteenth Amendment, Constitution	i
Fourteenth Amendment § 1, Constitution	3
28 U. S. C. § 1332	1
28 U. S. C. § 1333	2
42 U. S. C. § 1981	i, 2
42 U. S. C. § 1983	i, 3
42 U. S. C. § 1985 (3)	i, 2
Executive Jet Aviation, Inc. v. City of Cleveland, 409 U. S. 246, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972)	2
Flagg Brothers, Inc. v. Brooks, 436 U. S. 149, 98 S.Ct. 1729, 56 L.Ed. 185 (1978)	3
Gibbons v. Ogden, 9 Wheat. 1, 6 L.Ed. 23 (1824)	2
Griffin v. Breckenridge, 403 U. S. 88, 91 S.Ct. 1790, 29 L.Ed. 338 (1971)	2
Strawbridge v. Curtiss, 3 Cranch 267, 2 L.Ed. 435 (1806)	2

No. 85-1039

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

KENNETH B. QUANSAH,
Petitioner,

VS.

JIM BUTLER & CO. and JIM BUTLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

The respondents Jim Butler & Co. and Jim Butler, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's opinion in this case. That unpublished opinion appears as Appendix 3 to petitioner's Petition for a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD BE DENIED

A. Since there is no diversity of citizenship there is no diversity jurisdiction under 28 U.S.C. § 1332.

All parties to this suit are California citizens for the purposes of the diversity statute.

Petitioner submits that respondents "had a California business office" [Petition, page 5, line 18], and that petitioner was living and working in California at the time of the incident [Petition, page 13, lines 10-12]. Petitioner alleges neither non-California citizenship for himself, nor non-California principal place of

business and citizenship for respondents. There is no diversity jurisdiction since all plaintiffs must have state citizenship different from those of all defendants. *Strawbridge v. Curtiss,* 3 Cranch 267, 2 L. Ed. 435 (1806).

B. There is no federal subject matter jurisdiction since no federal question is posed.

1. *A motor vehicle accident is not a "regulation of commerce" under the Commerce Clause, Article I, § 8, of the Constitution.*

This matter has nothing to do with the regulation of commerce, nor does petitioner make any such allegation.

The domain of the Commerce Clause is not private acts of commerce, but rather the regulation of commerce by federal or state government. *Gibbons v. Ogden,* 9 Wheat. 1, 6 L. Ed. 23 (1824).

2. *This motor vehicle accident on a freeway does not involve maritime activity under 28 U.S.C. § 1333.*

Petitioner was not involved in a "traditional maritime activity", nor does he allege he was.

There is no maritime jurisdiction without traditional maritime activity. *Executive Jet Aviation, Inc. v. City of Cleveland,* 409 U.S. 246, 272, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972).

3. *Without an allegation of discrimination, petitioner's claim is not cognizable under 42 U.S.C. § 1981 or 1985(3).*

Petitioner was not the object of any discrimination, nor does he make any such allegation.

Section 1981 prohibits discriminatory restriction of priviate contract rights, perhaps including bias in the enforcement of third party rights under a liability insurance policy. However, the limit of federal cognizance of such private action is clearly defined: Any claim under the related § 1985(3), and, by extension, under section 1981, must contain an allegation of "invidious discriminatory animus". *Griffin v. Breckenridge,* 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971).

4. *Since there was no participation by any governmental actor, petitioner's claim is not cognizable under 42 U.S.C. section 1983 and the Due Process Clause of the Fourteenth Amendment.*

The actions of which petitioner complains were uniquely private actions, and petitioner does not allege any participation by a government official.

For an act to be performed "under color of state law", not only must it be performed under governmental rules, but it must also include the active participation of a governmental actor. *Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 163, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978).

CONCLUSION

For these reasons, petitioner fails effectively to plead federal jurisdiction, and his petition for writ of certiorari should be denied.

Respectfully submitted,

JAMES T. LINFORD
465 California Street
11th Floor
San Francisco, CA 94104
Counsel for Respondent